

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

JOINT APPROPRIATIONS SUBCOMMITTEE ON CORRECTIONS AND PUBLIC SAFETY

Call to Order: By **VICE CHAIRMAN TRUDI SCHMIDT**, on February 11,
2005 at 8:00 A.M., in Room 317-A Capitol.

ROLL CALL

Members Present:

Sen. Trudi Schmidt, Vice Chairman (D)
Sen. Keith Bales (R)
Sen. Steven Gallus (D)
Rep. Ray Hawk (R)
Rep. Cynthia Hiner (D)
Rep. John E. Witt (R)

Members Excused: Rep. Tim Callahan, Chairman (D)

Members Absent: None.

Staff Present: Brent Doig, OBPP
Harry Freebourn, Legislative Branch
Shannon Scow, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion
are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted:
Executive Action: HB 2; Department of Corrections

SEN. SCHMIDT called the meeting to order.

*{Tape: 1; Side: A; Approx. Time Counter: 0 - 13.9; Comments:
Meeting overview, Discussion on Previous Pre-release per diem
motion}*

Mr. Freebourn distributed Exhibit 1, which shows the committee what action has been taken on Department of Corrections (DOC) Decision Packages (DPs) to date. Those in light blue are those that are being considered today.

EXHIBIT(jch34a01)

He explained that pre-release per diem needs to be reconsidered in order to clarify the intent of the previous motion. **SEN. GALLUS** expressed concern that this DP would be reopened when there was clear intent previously in a 2% increase in FY06 and 2% in FY07. **Mr. Freebourn** stated that the dollar amounts used in the previous motion did not create a total 4% increase.

Through further discussion, the committee reiterated that the motion does need added language and clarification. **SEN. GALLUS** expressed further concern that the issue would be reopened.

EXECUTIVE ACTION ON DEPARTMENT OF CORRECTIONS

The committee decided to revisit the issue of prisoner per diem for Warm Springs Addiction Treatment and Change Program (WATCH), pre-release and Corrections Corporation of America (CCA) at the beginning of the meeting.

Prisoner Per Diem Increase

Motion: **SEN. BALES** moved that WATCH PRISONER PER DIEM INCREASE OF \$52,582 IN FY06 AND \$105,164 IN FY07, BE ADOPTED.

Discussion:

REP. WITT confirmed that this is a two percent increase in the first year, then a two percent increase upon the new figure. **Mr. Freebourn** confirmed the two percent per year increase, noting that for technical purposes lump sums are needed in the motion.

Vote: Motion carried unanimously by voice vote. **CHAIRMAN CALLAHAN** voted aye by proxy.

Motion/Vote: SEN. BALES moved to RESCIND THE PREVIOUS ACTION ON PRE-RELEASE PER DIEM. Motion carried 6-1 by voice vote with REP. GALLUS voting no. CHAIRMAN CALLAHAN voted aye by proxy.

{Tape: 1; Side: A; Approx. Time Counter: 17 - 24.3; Comments: Pre-release Per Diem Increase}

Motion: SEN. BALES moved that PRE-RELEASE PER DIEM RATES ARE INCREASED BY 2% EACH YEAR OF THE BIENNIUM, RESULTING IN A \$241,031 INCREASE IN FY06 AND \$482,062 INCREASE IN FY07, BE ADOPTED.

Discussion:

Joe Williams, Department of Corrections, stated that the figures in the motion are based on a 2% increase each year of the biennium on current pre-release beds. Depending on what the committee chooses to do later with the contract beds decision, perhaps this number should be increased. SEN. BALES replied that the committee should vote on the motion above. If beds are added further funds will be added to the pre-release per diem increase.

Substitute Motion: REP. WITT moved that THE PRE-RELEASE PER DIEM INCREASE MOTION BE AMENDED TO INCLUDE LANGUAGE REQUIRING A PERFORMANCE AUDIT ON PRE-RELEASE CENTERS TO BE DONE BY THE DEPARTMENT OF CORRECTIONS.

Discussion:

REP. WITT believes an audit would add credibility to the pre-release centers. Bill Slaughter, Director of Department of Corrections, added that the DOC already audits the facilities on a routine basis, so this audit would be within their scope.

Vote: The substitute motion carried unanimously by voice vote. CHAIRMAN CALLAHAN voted aye by proxy.

Department of Corrections Performance Audit

{Tape: 1; Side: A; Approx. Time Counter: 24.5 - 30}{Tape: 1; Side: B; Approx. Time Counter: 0 - 10.7; Comments: Discussion on a DOC performance audit}

REP. WITT requested the DOC respond on the issue of a DOC facility audit. He inquired whether it would be more beneficial to have an in-house or legislative audit. Mr. Slaughter replied

that a legislative audit would do a good job but a DOC audit would have further depth of knowledge on corrections issues.

SEN. BALES inquired about the in-house audits currently being done. He asked if these are being reported to a particular board. **Mr. Slaughter** responded that these audits are published and can be supplied to an interim committee. There is currently a two-year cycle for completing all in-house audits.

Through discussion the committee decided a complete facility in-house performance audit should be done, to be reported to the Legislative Finance Committee, the Law and Justice Interim Committee, the Governor's Advisory Council and the Corrections Advisory Council. The most recent audit will be reported on a quarterly basis.

Motion: REP. WITT amended his original motion as follows: that A PERFORMANCE AUDIT BE COMPLETED ON ALL PRERELEASE CENTERS, REGIONAL PRISONS AND CORRECTIONS CORPORATION OF AMERICA, DONE BY THE DEPARTMENT AND REPORTED TO THE LEGISLATIVE FINANCE COMMITTEE, THE LAW AND JUSTICE INTERIM COMMITTEE, THE GOVERNOR, AND THE CORRECTIONS ADVISORY COUNCIL BY THE END OF DECEMBER 2006.

Discussion:

The committee clarified that the DOC will report on an ongoing basis, to be completed by the last meeting before December 2006. **Director Slaughter** added that the latest report would be given at each meeting. The advisory council can come up with a schedule to prioritize the program audits.

Vote: Motion carried unanimously by voice vote. CHAIRMAN CALLAHAN voted aye by proxy.

Prisoner Per Diem Continued

{Tape: 1; Side: B; Approx. Time Counter: 10.7 - 17.5; Comments: Prisoner Per Diem Increase}

Motion: REP. WITT moved a PER DIEM INCREASE FOR CORRECTIONS CORPORATION OF AMERICA OF 2% IN FY06 AND 3% IN FY07, BE ADOPTED.

Discussion:

REP. WITT stated this increase is based on earlier reductions and beds cut from CCA.

SEN. BALES asked to hear from the department on whether they believe CCA has been penalized more than the regional prisons. **Mr. Williams** stated that CCA has worked as the legislative branch has designed; when more money is available CCA will benefit and when less money is available CCA loses beds.

Substitute Motion/Vote: REP. HINER made a substitute motion that CORRECTIONS CORPORATION OF AMERICA IS GRANTED A PRISONER PER DIEM INCREASE OF 2% AND 2% AS GIVEN TO PREVIOUS ENTITIES, RESULTING IN A \$178,441 INCREASE IN FY06 AND \$356,882 INCREASE IN FY07. Substitute motion carried 5-2 by voice vote with REPS. HAWK and WITT voting no. CHAIRMAN CALLAHAN voted aye by proxy.

CHAIRMAN CALLAHAN is now present.

Motion/Vote: SEN. BALES moved to RESCIND THE PREVIOUS ACTION ON REGIONAL PRISON PER DIEM. Motion carried 6-1 by voice vote with REP. GALLUS voting no.

Motion/Vote: SEN. BALES moved that REGIONAL PRISONER PER DIEM IS INCREASED 2% EACH YEAR OF THE BIENNIUM, RESULTING IN A \$147,859 INCREASE IN FY06 AND \$295,718 IN FY07, BE ADOPTED. Motion carried unanimously by voice vote.

Juvenile Diversionary Intervention Program (JDIP) Funds

Motion: REP. CALLAHAN moved to TRANSFER \$1.5 MILLION FROM WITHIN THE DEPARTMENT OF CORRECTIONS BUDGET FROM SECURE FACILITIES TO JDIP AND TO RESTRICT THE FUNDS TO JDIP, BE ADOPTED.

Discussion:

CHAIRMAN CALLAHAN explained this amount would re-establish money that was originally in the JDIP budget, but was put in secure care when there was excess funds in JDIP. This amount would not restore the program to its original \$9.3 million funding, but would bring funding back up to \$7.8 million.

Substitute Motion/Vote: REP. HINER made a substitute motion to SEGREGATE THE \$1.5 MILLION APPROPRIATION FROM THE ORIGINAL MOTION. Substitute motion carried 6-1 by voice vote with REP. HINER voting no.

Vote: The motion concerning the restriction carried unanimously by voice vote.

Lock down at CCA

{Tape: 1; Side: B; Approx. Time Counter: 21.2 - 29.5}{Tape: 2; Side: A; Approx. Time Counter: 0 - 7.5; Comments: Lock down at Shelby}

SEN. SCHMIDT brought before the committee an issue concerning a recent lock down at CCA. The report given to **SEN. SCHMIDT** stated that during this lock down, prisoners were asked to get on their knees in order to be served food or medications. She asked for clarification on the situation, asking if this is a routine situation at CCA and the DOC or if it occurred due to lack of staff.

SEN. GALLUS asked, "Who authored the statement?" **SEN. SCHMIDT** replied it was a legitimate, concerned person who has remained anonymous due to fear of repercussion. **SEN. BALES** voiced concern about allegations being made by anonymous sources.

Jim MacDonald, Warden at Correction Corporation of America at Shelby, informed the committee that the event which is under discussion occurred on January 22nd when he received word of prison gang activity. A routine search was called to find an alleged weapon and the facility went into lock down. Contraband was uncovered, as well as the alleged weapon. This resulted in some inmate transferring.

Lock downs are used at least once a year to search for contraband. During the lock down period certain procedures are followed, including the one stated above. The prisoner must kneel in the corner whenever their cell is opened for safety procedures.

Mr. MacDonald emphasized that this lock down did not occur due to staffing issues. It was because there was a threat to the security of the inmates. CCA is only short six Correctional Officers, which is not unusual for the correctional system.

Discussion:

REP. HINER asked Mike Mahoney, Warden of Montana State Prison (MSP), if a lock down situation has occurred at MSP or if this is unique to CCA. **Mike Mahoney, Warden of MSP**, replied that MSP locked down within this week for a shake down. Lock downs are used for standard safety procedure.

SEN. SCHMIDT thanked the Wardens for responding in the way that they did. She stated she wanted to bring up the issue at a time

when Warden MacDonald was able to respond before rumors were brought in front of the legislature.

Discussion on a Contract Bed Study Bill

{Tape: 2; Side: A; Approx. Time Counter: 8 - 29.5; Comments: Study Bill Discussion}

Taryn Purdy, Legislative Fiscal Division, came before the committee to explain the study bill procedure. She explained the committee can make a study bill as long as the decision is in your possession, with a three-fourths approval. This bill would go into the hopper with other study bills, from which five or six studies are chosen at the end of the session. The other option is to place this study, with a specific committee and specific members attached, in bill format. This would be heard before the Appropriations Committee and go through the legislative process.

Discussion:

REP. WITT asked for the goal of the proposed study. **REP. HINER** stated that she is in favor of the study bill. It would look at the performance and future of secure care with the DOC. The study would establish a long term care plan in terms of building and treatment plans. **REP. WITT** believes this study is important and should not end in the hopper.

SEN. GALLUS proposed that the Governor appointed a Corrections Advisory Board to take on the issue of secure beds. **Joe Williams** added that the Advisory Board is already developing a strategic plan to place 80% of the Corrections population into Community Corrections. **Director Slaughter** explained the make up of the committee as requested by **REP. HAWK**. He emphasized that the Advisory Board has a broad base of members.

REP. HAWK stated that the committee needs to decide what they hope to accomplish, whether it is a long term prison system or Community Corrections. He believes the options that have been discussed are a band-aid and that people with expertise need to be hired to establish a long-range plan. **CHAIRMAN CALLAHAN** added that an appropriation will be needed to hire these expertise.

SEN. BALES believes the Advisory Council is currently serving their desired purpose, and the study is not exactly in line with the purpose. He believes we need outside professionals. Legislative presence is also important because ultimately the plan will end up back at the legislature and will need as much support as possible.

SEN. GALLUS agreed that a study is needed for long term goals. He stated that he brought up the Advisory Council because he does not want to duplicate purpose. He proposed the Advisory Council apply for outside grants to hire outside technical assistance.

CHAIRMAN CALLAHAN said that the committee can request a bill, and request a study if the bill fails. The Advisory Council should be included in discussions as well from an internal discussion.

Motion: REP. HINER moved that A STUDY BILL BE CREATED OF WHICH SPECIFIC GOALS, OBJECTIVES, APPROPRIATION AND MEMBERS WILL BE DETERMINED.

Discussion:

Mr. Freebourn said that the specifics of the study can be formulated by the end of next week.

Vote: Motion carried unanimously by voice vote.

Department of Corrections Contract Beds

{Tape: 2; Side: B; Approx. Time Counter: 0 - 29.5; Comments: Contract Beds Initial Discussion}

Joe Williams distributed Exhibit 2, which shows a 20-year projection on operating and debt service cost on the proposed expansion options.

EXHIBIT(jch34a02)

Mr. Freebourn distributed Exhibit 3, which shows the total cost, beds and FTE of all options presented to the committee to date.

EXHIBIT(jch34a03)

SEN. GALLUS asked the DOC to explain the changes made to an earlier proposal given by Thatcher, Administrator of Community, Counseling and Correctional Services, Inc. **CHAIRMAN CALLAHAN** responded that a request for proposal (RFP) may be required of certain options, so if one of these options is chosen the specific end scenario may not be the same as the initial proposal. **Mr. Williams** added that the DOC would decide the RFP by June 30th. He has also heard interest from CCA and the regional prisons in regards to the specialized facility.

REP. WITT inquired about the original \$13.2 million that was proposed for contract beds expansion. He wants to know the flexibility in this figure. **Director Slaughter** replied that \$13.2 million was built into Schweitzer's budget for contract beds.

{Tape: 2; Side: B; Approx. Time Counter: 20 - 21; Comments: Director Slaughter Response; unintelligible}

REP. WITT indicated that there is still time to change prisoner per diem rates to supplement the \$13.2 million budgeted amount. **Director Slaughter** replied that the budget director is aware of the options currently presented before the committee. They have stated that they will work with the DOC on the committee's decision.

REP. HAWK inquired, "If the committee were to approve the original \$13.2 million without restriction, what would the DOC do with the money toward expansion?" **Director Slaughter** responded that all of the proposed options would be considered and discussed with the Governor. He said that all secure facilities are full, so a short-term expansion would be decided then they would use the study for a long-term decision.

REP. HAWK referred to the original plan that included a 500 bed Shelby expansion. He asked, "Will this plan change based on the study?" **Director Slaughter** responded that other options would be considered including private and public beds. **SEN. GALLUS** added that the original DP was restricted to non-state owned facilities.

The committee discussed RFP's, with **SEN. BALES** stating that if a figure was decided upon, the DOC would have to go out and issue an RFP to determine the best option. He also inquired about why an RFP would be needed for certain options that seem straight forward. **Mr. Williams** said the CCA was the only option at the beginning but now option five is preferred by the DOC, which involves an RFP. He explained that the DOC likes option five because it give a temporary position with the expansion of a regional prison. If the committee chooses to issue an RFP for this option this would have to be reconciled with the DOC administration.

Mr. Freebourn clarified the original DP 16, which states on D-98 of the Legislative Budget Analysis, "The executive is requesting an increase of \$4,219,294 in FY06 and \$8,935,099 in FY07 for contract facility payments based on a 5.62 percent adult male

population increase." He claimed that this DP explanation is very broad and could include both regional or private prisons.

SEN. BALES stated a bonding bill would be needed depending on which proposal is chosen.

CHAIRMAN CALLAHAN informed the committee that a specific amount can be appropriated and left to the DOC to decide, or the committee can restrict the appropriation to a specific project and assume that these beds would be filled.

Discussion and Motion on Option 5D

{Tape: 3; Side: A; Approx. Time Counter: 0 - 18; Comments: Motion and discussion on Option 5D}

Motion: REP. WITT moved that OPTION 5D ON EXHIBIT 3, WITH A 208 BED EXPANSION AT CCA, THE TRANSFER OF 88 MARSHALL BEDS TO THE DOC, AN 85 BED REVOCATION CENTER, AND A 287 BED PRE-RELEASE EXPANSION, BE ADOPTED.

Discussion:

REP. WITT explained that although he supports the 500-bed Shelby expansion, the above option is in Montana's best interest because it gives the largest amount of flexibility to the state.

REP. HAWK expressed concern that this option takes away the 88 U.S. Marshall beds. **REP. WITT** responded that Marshall beds are Montana citizens who are sentenced federally, but flexibility is needed within the time frame given for expansion. He asked Director Slaughter to respond.

Director Slaughter explained that U.S. Marshall beds are contracted DOC beds. If no addition is built these prisoners may need to be moved out of state. He expressed concern that the state would move a DOC inmate out of state when federal beds are being protected, even if they are Montana prisoners. He added that the U.S. Marshall knew this bed cut would be coming. These beds are needed short-term, and although the Marshall inmates are Montanans, they are not under state jurisdiction.

REP. WITT said that he wants to work the Marshall beds back into the system but until further review, this option gives the most flexibility and beds for the price.

REP. HAWK inquired, "Would this option be restricted to the proposal or would the DOC be given flexibility?" He added that

he would not like to see this restricted. **REP. WITT** stated that he would like to restrict the option, but would like to leave it open for committee discussion.

SEN. BALES stated that the committee should list a dollar amount for each FY and direct the department to issue an RFP to see if a less expensive, better proposal exists.

SEN. GALLUS advised the committee to chart a new course for the future. He said that the department has approached the committee looking for direction. The committee should decide whether they favor private, public or private non-profit. He emphasized that the committee needs to give the DOC a specific direction.

SEN. BALES indicated that the study that was approved by the committee is an effort for real long-term planning. The committee now needs to bridge the gap until results are found through this study. He leans towards the Shelby option because the DOC has gotten good value out of this option. He believes the committee is not ready to set the future in concrete.

SEN. GALLUS said that he supported the study because it is the right thing, but firmly believes that special facilities reduce recidivism. The proposal given by Mr. Thatcher is in line with his philosophy. Furthermore, he resists giving a dollar amount to the DOC and instead wants to specify a facility to be installed in the Deer Lodge Valley.

REP. WITT stated that Option 5D builds in choices for the director. He added that he is leaning toward restricting the option but could be convinced otherwise. He wants to move the motion forward.

SEN. SCHMIDT indicated that the main issue is to expand the private for-profit or non-profit. She stated that she is against the expansion of for-profit prisons. She believes the committee needs to look at a specialized care facility.

REP. WITT said with this option the capital needed is less, the demand on the state is less, the demand for bond is less, and it is good for creating jobs. He added that he believes the idea of privatization makes sense.

Vote: Motion failed 3-4 by roll call vote with **SEN. BALES**, **REP. HAWK**, and **REP. WITT** voting aye.

Motion/Vote: REP. WITT moved that OPTION 4 ON EXHIBIT 3, WITH A 500 BED SHELBY EXPANSION, BE ADOPTED. Motion failed 3-4 by roll call vote with REPS. BALES, HAWK, and WITT voting aye.

Mr. Williams clarified to the committee that a letter will be sent to the U.S. Marshall notifying them of their eviction by July 1. This will be done no matter what decision is made by the committee because those beds will be needed.

Motion and Discussion on Option 5C

{Tape: 3; Side: A; Approx. Time Counter: 21.5 - 29.5; Comments: Motion and Discussion on Option 5C}

Motion: REP. HINER moved that OPTION 5C, WITH A 240 BED SPECIALIZED CARE FACILITY, AN 85 BED REVOCATION CENTER, AND A 287 BED PRE-RELEASE EXPANSION, BE ADOPTED.

Discussion:

CHAIRMAN CALLAHAN approved the concept of this option. He noted that a RFP would need to be issued for a new special care program, but this appropriation can be restricted to be used in that regard. He emphasized that if the committee approves this option they are approving the concept but there is no guarantee on the definite outcomes.

SEN. GALLUS supported the motion and believed it should not be restricted. He affirmed his trust in the DOC that an RFP would be issued to designate these beds to the special needs population.

CHAIRMAN CALLAHAN agreed that the special needs population needs to be addressed. However, if a separate, new facility is established there should be discussion on which special group to support. He added that the revocation center within this option gives the DOC the option to place revocation inmates in a lower cost, lower security bed, opening up other beds for long term care.

SEN. BALES stated that this option is a good proposal. He indicated that the DOC needs to look at the needs of the current and future prison population. An RFP will be sent out to address these special needs. He noted his support for the revocation center and inquired if the old reception center will

automatically be used for this need or if an RFP would be issued. **Mr. Williams** replied that the intent is for the old reception center because minimum remodeling would be involved.

Vote: Motion carried 6-1 by roll call vote with REP. HAWK voting no.

Closing Issues

SEN. BALES stated that the study bill should be distributed so the committee's thoughts are included. **Mr. Freebourn** replied that currently the language is broad. He will distribute a draft of the bill, which will then be brought together by the end of next week.

SEN. BALES inquired if bonding authority will be needed. **Mr. Williams** stated that bonding authority is not needed for option 5C.

Motion/Vote: SEN. SCHMIDT moved to CLOSE THE SECTION ON THE DEPARTMENT OF CORRECTIONS. Motion carried unanimously by voice vote.

ADJOURNMENT

Adjournment: 11:00 A.M.

REP. TIM CALLAHAN, Chairman

SHANNON SCOW, Secretary

TC/ss

Additional Exhibits:

EXHIBIT ([jch34aad0.PDF](#))